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SUBJECT: MEDIA REFORM LAW DECLARED UNCONSTITUTIONAL

REF: A. 05 SEOUL 20

[1](#)B. 04 SEOUL 05258

#### SUMMARY

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1 (SBU) On June 30, the Constitutional Court declared the government's controversial 2005 media reform package, which employed antitrust principles to regulate the newspaper market, mostly unconstitutional. The ruling was a victory for the conservative media, who argued that the law was a politically-motivated attempt to stifle the administration's critics. END SUMMARY.

#### THE MEDIA REFORM LAW

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[1](#)2. (U) On January 1, 2005, the National Assembly passed a bitterly-contested media reform package ostensibly designed to increase diversity in the media market (Refs A, B). The law, which has been in effect since July 2005, provided the Fair Trade Commission authority to impose restrictions on publishers if any one newspaper has more than 30 percent of the market or if three major newspapers have a combined market share of 60 percent or more. The law also required press owners to report their circulation and advertising revenue to a Press Development Committee. The law did not apply to broadcast or internet media.

[1](#)3. (SBU) The government argued that the restrictions were necessary to open the media market to a variety of opinions. Justice Minister Chun Jung-bae, who in 2004 was a Member of the National Assembly, explained to us previously that the law would help ensure media competition and its intent was not to stifle the press.

[1](#)4. (SBU) The conservative media, however, cried foul from the start. The JoongAng Ilbo wrote in an October 15, 2004, editorial that the proposal "destroyed our hopes for the true advancement of journalism and democratic society." Other editorials were equally alarmist. Indeed, there has long been animosity between the Roh Administration and the conservative press -- in particular, the Chosun Ilbo, the JoongAng Ilbo, and the Dong-A Ilbo. Together, the three newspapers control about 75 percent of the press market and have been, at times, harshly critical of the government. Many observers thought it was suspiciously convenient that the media reforms would most affect these three newspapers, while not touching the historically pro-administration broadcast and internet media. However, some progressive

media companies, such as Hankyoreh newspaper, welcomed the law as a necessary measure to break open the print media market.

¶5. (U) In February 2005, local newspapers, including the Chosun Ilbo and Dong-A Ilbo, and former Grand National Party lawmaker Chung In-bong filed a petition objecting to the law in the Constitutional Court. In essence, the plaintiffs argued that the law was an unjust use of government power and infringement on freedom of the press as guaranteed by the ROK Constitution.

#### UNCONSTITUTIONAL RESTRICTION ON PRESS FREEDOM

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¶6. (U) The Constitutional Court on June 29 ruled that the media reform law was, in large part, unconstitutional and in violation of the ROK's Constitutional freedom of the press. The Court noted that ordinary businesses were considered to be monopolistic when they commanded more than 75 percent of the market. The media law's differing treatment for newspapers constituted unfair discrimination. The court said that popular newspapers should not be punished for attracting more readers. The court also ruled that provisions of the law that compelled newspapers to publish corrections without a court order and prohibited an individual who owned more than half of one daily from owning more than half of another were also unconstitutional. The court, however, ruled that the provision of the law that required newspapers to publicize information on their circulation, advertising revenue and other financial information was constitutional.

¶7. (SBU) Attorney for the newspapers and Professor of Media Law at Hong-ik University Bang Suk-ho told poloff on June 29 that the ruling was significant to preserve freedom of the press in the ROK. He said that the case was unique in that it forced progressive media and other groups to argue in favor of a restriction of civil rights, that is, the rights of the conservative media to a free press.

¶8. (SBU) Bang was not disturbed by the provision of the law that the court allowed to stand. Because newspapers now had to release their circulation information, advertisers were able to discern how few people subscribe to Hankyoreh and some of the other liberal press. As a result, the law appeared to have caused a shift in advertising revenue from the progressive media to the wider-reaching conservative press, he said.

#### COMMENT

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¶9. (SBU) As reflected in our 2004 and 2005 Human Rights Reports, we have long had misgivings about the media reform law. The notion of increasing diversity in the media market is a good one; however, there should be ways for the government to achieve this without muzzling the voices of its critics.

VERSHBOW